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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1990

Addendum

BOLIVIA*

[20 March 1996]

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* For the initial report submitted by the Government of Bolivia, see CCPR/C/26/Add.2; for its consideration by the Committee, see CCPR/C/SR.896-897 and SR.900 and the Official Records of the General Assembly, Forty-fourth session, Supplement No. 40 (A/44/40, paras. 405-453).

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INFORMATION CONCERNING ARTICLES 1-27 OF THE COVENANT

Article 1 - Right to self-determination and free disposition of natural wealth and resources

1. The right to self-determination of the Bolivian State, a founder Member of the United Nations, is referred to in article 1 of its Constitution:

> "Bolivia, free, independent, sovereign, multiethnic and pluricultural, constituted as a unitary republic, adopts for its government the democratic representative form, founded on the union and solidarity of all Bolivians".

2. In exercise of this right Bolivia has been a democratic State since 13 years ago when, following a succession of de facto military Governments, it made a return to the democratic system, which is now fully in force. The president, vice-president, members of parliament and in general all public officials are elected in the manner specified in the Constitution and laws of the Republic. The constitutional guarantees are respected, the international human rights covenants are observed, and the various reforms introduced by the Government to modernize the State and promote social progress are being carried out within the framework of the laws and the Constitution.

3. Bolivia freely disposes of its natural wealth and resources on the basis of its sovereignty and self-determination, with the exception of the production and marketing of the coca leaf, which are controlled by international agreements and by Bolivia's own laws.

4. The protection and conservation of the environment and natural resources are regulated in Bolivia by the Environment Act of 27 April 1992.

5. Coca may be legally sown only in certain areas of the national territory, and its marketing is subject to controls. Thus, there is a legal coca leaf and an illegal one. Some of the provisions of the Coca and Controlled Substances Regime Act are quoted below:

> "Art. 1 - Coca, whose technical generic name is Erithroxilum, is a natural subtropical crop of the departments of La Paz and Cochabamba. It grows there in the wild and is cultivated on farms dating back to Bolivia's pre-Colombian era.
>
> Art. 2 - Coca cultivation is a traditional farming activity connected with the legal consumption of coca and its medical and ritual use by the Andean peoples.
>
> For the purposes of the present Law three areas of coca production in Bolivia are defined and delimited:
>
> (a) Traditional production area;
>
> (b) Area of excess production in transition;
>
> (c) Illicit production area.

Art. 15 - The production, transport and marketing of coca are subject to control by the State through the competent organ of the Executive and are governed by special regulations within the legal framework of the present Act".

6. However, there are large groups of the population which believe that the coca leaf is a natural resource of the Bolivian people, which must be used in accordance with national interests. This view holds that this farm crop, considered without reference to the chemical processing of drugs, is part of the sociological reality of Bolivia's rural world. This belief is the reason for the strong peasant opposition to the eradication of coca plantations in areas of excess and illegal production.

Article 2 - Guarantee of and effective respect for the rights recognized in the Covenant

7. In express reference to the equality of all Bolivians before the law, article 6 of the Constitution states:

"Every human being has legal personality and capacity, in accordance with the law. He enjoys the rights, freedoms and guarantees recognized by this Constitution, without distinction as to race, sex, language, religion, political or other opinion, origin, or economic, social or any other condition".

8. There thus exists a constitutional basis for:

(a) Ensuring respect for and guaranteeing, without any distinction, the rights recognized in the Covenant on Civil and Political Rights;

(b) Enacting the legislative or other provisions necessary for exercise of the rights recognized in the Covenant;

(c) Recourse to constitutional remedies in the event of violation of fundamental rights.

Legacy of the past

9. Despite all the efforts made by the present Government to secure the well-being of all sectors of Bolivia's population with full respect for human rights, the legacy of the past persists in the mistreatment of some races in areas remote from the centres of population. This is the case of the Guaraní people, many of whose members are subjected to real and systematic exploitation by estate-owners in the south-east of Bolivia.

10. The Commission on Human Rights of the Chamber of Deputies stated in its 1994 report to the Legislature, with reference to the situation of the Guaraní people:

"The Guaraní people in the provinces of Cordillera de Santa Cruz, Luis Calvo and Hernando Siles de Chuquisaca live in inhuman conditions of semi-slavery; unpaid service (ponqueaje) and servitude are imposed on whole families, denying them opportunities of education and health care and

systematically usurping their land ... The land problem in the Chaco is manifested in the continuous plundering of a number of free communities by legal trickery or faits accomplis ... Furthermore, the communities held captive on the estates do not own a single plot and have difficulty growing crops or raising animals on the scraps of land provided by the owners ...".

11. On 18 September 1996 the daily newspaper Presencia took up this topic again under the headline "Confirmed that Guaranís live under slavery system". In view of this situation, the Human Rights Department of the Ministry of Justice has decided to set up a commission composed of representatives of the Government and of civil society to ensure the effective exercise of the rights of the Guaraní people and it has brought the case to the attention of the Attorney General of the Republic, with a view to his ordering the necessary investigations in exercise of his constitutional powers.

Article 3 - Effective equality of men and women

12. The legal equality of all Bolivians is expressly recognized in article 6 of the Constitution. The Constitution makes no distinction between men and women. It speaks in terms of gender but recognizes men and women as citizens regardless of their level of education, occupation or income.

13. Article 41 of the Constitution, amended by Law No. 1585 of 12 August 1994, states: "Citizens include all Bolivians, male and female, over eighteen years of age, regardless of their level of education, their occupation or their income".

14. There is thus a constitutional and legal basis for guaranteeing the following rights:

(a) The right to equality of treatment in the courts and all the other bodies which administer justice. Article 5 of the Judiciary Organization Act states: "The magistrates and judges, when hearing and deciding cases, shall apply the State Constitution in preference to the laws and the laws in preference to any other provisions. Specific laws shall be applied in preference to general laws. Article 3 of the Office of the Attorney General Act states: "The Attorney General shall act in strict conformity with the legal requirements, take the actions inherent in his functions when appropriate, or oppose any improper actions, to the extent and in the manner prescribed by the State Constitution and the law". With a view to the exercise of this right to equality of treatment the Executive, through the Ministry of Justice, has prepared a bill on an "oath of compliance" (fianza juratoria) to combat delays in the criminal justice system; this bill has so far won the approval of the Chamber of Senators of the National Parliament. It is designed to improve the level of social and legal equality in the relations between the parties involved in criminal proceedings solely by means of their sworn undertaking to comply strictly with their obligations in the case;

(b) The right to security of person and protection by the State against any act of violence or attack on personal integrity committed by public officials or by any individual, group or institution. On this point the Constitution states:

"Art. 12 - Any kind of torture, coercion, extortion or other form of physical or moral violence is prohibited, under penalty of immediate removal from office and without prejudice to the sanctions that may be incurred by any one who applies, orders, instigates or consents to them.

Art. 13 - Assaults on the person render the immediate perpetrators criminally liable, and the fact that in committing the offence they obeyed the orders of a superior shall not serve as an excuse.

Art. 14 - No one may be tried by special commissions or brought before judges other than those appointed before the offence was committed, nor shall he be compelled to testify against himself in a criminal trial or against blood relatives up to the fourth degree inclusive, or by affinity up to the second degree, as reckoned by civil law".

In addition, any person living in our territory, in the event of an attack on or violation of any of his fundamental rights, has a very broad entitlement to bring proceedings of habeas corpus or of amparo in order to ensure that the legal formalities are followed or to secure redress of illegal acts or improper omissions on the part of officials or private individuals. These remedies are provided by articles 18 and 19 of the Constitution;

(c) Political rights, in particular the right to take part in elections, to vote and to be elected by means of universal and equal suffrage, the right to participate in the Government and in the management of public affairs at all levels, and the right of access to public office under conditions of equality. For these rights we refer to the information concerning articles 25 and 26 of the Covenant;

(d) Other civil rights such as the freedom of movement and the rights to a nationality, matrimony, private property and inheritance, and the freedoms of opinion, expression and assembly. On these fundamental rights the Constitution and laws of the Republic state:

"Art. 7 - Every person has the following fundamental rights, in accordance with the laws which regulate the exercise of those rights:

(b) To freely express his ideas;

(c) To assemble and to associate for lawful purposes;

(g) To enter, remain in, pass through and leave the national territory;

(h) To make petitions, individually or collectively;

(i) To own property, individually or collectively, provided it fulfils a social function.

Art. 3 - The State recognizes and upholds the Roman Catholic Apostolic Religion. It guarantees the public exercise of any other worship ...

Art. 36 - The following persons are Bolivians by origin: (1) those born in the territory of the Republic, except for children of foreigners who are

in Bolivia in the service of their Government; (2) those born in a foreign country of a Bolivian father or mother, by the sole act of taking up residence in the national territory or of registering in a consulate;

Art. 37 - The following persons are Bolivians by naturalization:

(1) Spaniards and Latin Americans, who may acquire Bolivian nationality without renouncing their nationality of origin, whenever, by reciprocity, there are conventions on plural nationality with their respective Governments;

(2) Foreigners who, having resided for two years in the Republic, declare their intention of acquiring Bolivian nationality and who obtain a certificate of naturalization according to the law. The period of residence in reduced to one year in the case of foreigners who find themselves in the following circumstances:

(a) Have a Bolivian spouse or children;

(b) Are engaged in regular agricultural or industrial work;

(c) Are engaged in educational, scientific or technical activities.

(3) Foreigners who perform military service at the legally required age;

(4) Foreigners who, for their service to the country, obtain Bolivian nationality from the Chamber of Senators".

With regard to the right to matrimony, a family and maternity, the Constitution states:

"Art. 193 - Matrimony, the family and maternity are under the protection of the State.

Art. 194 - Matrimony is based on the equality of the rights and duties of the spouses. Free or de facto unions that meet the conditions of stability and singularity and that are maintained between persons having the legal capacity to marry produce effects similar to marriage in the personal and property relations of the parties living together and with regard to the children born to them.

Art. 195 - All children, without distinction as to origin, have equal rights and duties with respect to their parents".

The Family Code states:

"Art. 5 - (Public order) The rules of family law are rules of public order and may not be waived at the wish of the persons concerned, under penalty of nullification, except in the cases expressly permitted by law.

Art. 41 - The law recognizes only civil marriage, which must be contracted in accordance with the requirements and formalities set out in the present Title.

Art. 44 - Marriage may not be contracted by males before the age of 16 years or by females before the age of 14 years. A judge may grant dispensation of such age restrictions on serious and justified grounds".

On the right to inheritance the Civil Code contains the following principal rules:

"Art. 1000 - A persons's succession is opened by his actual or presumed death.

Art. 1002 - Inheritance may be delegated by law or at the wish of one of the persons referred to in the will. In the first case the heir is legal; in the second, testamentary.

Some legal heirs are compulsory, required to inherit by the law alone; others are merely legal and are entitled to inherit in the absence of compulsory or testamentary heirs.

Art. 1008 - In order to inherit, it is necessary to have been born or conceived at the time when the succession is opened".

(e) The right to work, to form trade unions, to housing, to social security, to education and to participate in cultural activities. On these rights the Constitution states:

"Art. 7 - Every person has the following fundamental rights, in accordance with the laws which regulate the exercise of those rights:

(a) To life, health and safety;

(c) To assemble and to associate for lawful purposes;

(d) To work and to engage in commerce, industry or any other lawful activity, provided that no harm is done to the common welfare;

(e) To receive an education and to acquire culture;

(j) To a fair remuneration for his labour, which will provide himself and his family with an existence worthy of a human being;

(k) To social security, in the form determined by this Constitution and the law.

Art. 21 - Every home is an inviolable asylum; at night it shall not be entered without the consent of the person who inhabits it, and by day entry thereto shall only be allowed on written order of a competent authority setting forth the reasons therefor, except in the case of flagrante delicto";

(f) The right of access to all places and services intended for public use, such as means of transport, hotels, restaurants, cafés, performances and parks. These rights are not restricted and are fully protected and guaranteed by the Constitution and other laws of the Republic.

The legacy of the past and the present reality

15. Despite the genuine efforts made by the democratic Government in terms of enacting laws and adopting agreements, owing to customs and situations which are difficult to change in the short term the legal equality of men and women is still not a reality in Bolivia. Women remain in a clear minority at all levels of decision-taking, especially at the highest levels of the Government, the Parliament, the Judiciary and the political parties. They do not participate sufficiently in the taking of public decisions or in the planning of the country's development strategies, including the decisions and strategies which directly affect them. We offer below some illustrations of this situation.

16. There is not a single woman member of the Cabinet of Ministers. Nor is there a woman among the 12 members of the Supreme Court of Justice. Out of a total of 147 deputies and senators in the Parliament, there are only 12 women. None of the political parties is headed by a woman. There is only one woman mayor in the country's dozens of municipalities, at either town or provincial level.

17. On the subject of the discrimination to which indigenous women are still subjected, merely by reason of their dress, the Vice-President of the Republic, Victor Hugo Cárdenas, gave an interview to a journalist:

> "Cárdenas recognizes that progress is slow but real and he is aware that the indigenous communities still suffer marginalization and racism. For example, his wife Lidia Katari, a teacher by profession, cannot work as a teacher because she wears the traditional indigenous dress of skirt, shawl and bowler hat. 'They told her years ago that either she gave up dressing that way or she did not work. She requested leave of absence and is now fighting for herself and the rest of the indigenous population. Her father was compelled to change his Aymara surname for the Spanish name of the maternal line...'" (El País, Madrid, reprinted in La Razón, La Paz, Bolivia, on 27 December 1994.)

18. However, an effort is being made to counter discrimination in the form of violence against women and in the family in a bill on family and domestic violence, which introduces arrangements for reporting incidents of family violence and having them punished.

19. On the equality of all persons before the law, the book Estudio del Funcionamiento del Sistema Penal en Bolivia (Study of the Functioning of the Penal System in Bolivia) prepared by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) and published by the Catholic University of Bolivia in June 1994, states the following conclusions:

> "SELECTIVITY - there is striking evidence that the current criminal law is inconsistent with the principle of the equality of all persons before the law, for it bears down one-sidedly on impoverished social groups and

provides impunity for the powerful, a situation reflected in a singular legal efficiency in punishing minor offences and not punishing "white-collar" or organized crime at all.

Selectivity begins in the police force, which, while claiming to comply with the principle of legality, decides arbitrarily who shall be brought before the courts. In the courts themselves selectivity is manifest when the judges invariably order the detention of the accused pending trial, making the situation worse by setting bail in amounts which they are too poor to find.

Selectivity is perceived both by the actors in the process and by the people at large, who never tire of repeating that the justice system is structured so as to favour the powerful and certainly not the weak who lack resources.

Since it is virtually impossible to investigate all offences - owing to lack of infrastructure, defective police organization and other factors - the solution must be sought in "controlled selectivity" or in the identification of situations which do not warrant criminal prosecution, in accordance with established standards of penal policy, an approach which also prevents the accumulation of cases.

In order to prevent judicial selectivity, it would be advisable to eradicate the deep-rooted custom of imposing imprisonment as an inevitable element of the sentence and to limit this measure to cases in which it is recommended by compelling reasons of prevention, and to introduce alternatives to detention pending trial and real-property or monetary sureties.

INACCESSIBILITY - there is reliable information which demonstrates that free access to the justice system is impeded by many different factors, such as the marginalization of large groups of the population, the inability of the person charged to understand the language used by the courts, the complexity and technical jargon of judicial proceedings, the bureaucratic and formalistic organization of the law-enforcement machinery, etc.

Inaccessibility does not mean only the impossibility of using the criminal justice system but also the impossibility of the parties finding effective immediate solutions to their dispute owing to cumbersome bureaucratic procedures, high costs, slow proceedings, inefficiency and the emergence of new problems, which leave the impression of a failure to dispense justice.

The dispensation of justice only to certain social groups is not truly democratic and the origins of this situation are to be found in the early stages of republican life when the Legislature adopted a European system without any reference at all to the country's inhabitants. This exclusive anomaly has remained in place even since the 1973 reforms.

If justice is to be dispensed to all sectors of society, the first concern must be to give effect to the content of the recent Law of 11 July 1991 concerning indigenous peoples, which recommends inter alia the adoption of

measures to protect the members of the indigenous population, taking into account their customs and customary law, providing that such measures are not incompatible with the fundamental principles of the national legal system.

Another effective way of tackling the problem would be to introduce a system of free legal aid and to create a service of translators and interpreters for speakers of indigenous languages, in order to ensure effective and coherent communication between the accused and their judges.

CORRUPTION - although the phenomenon of corruption in the administration of justice has always been perceived as an undeniable fact in Bolivia, such a situation has been confirmed by information obtained from specific surveys carried out for this investigation.

Statements by persons working in the system provide a good illustration, for they say that the means of corruption include not only cash payments but also payment by way of favours and political influence; cash payments are commonest in the police force and among junior officials, while favours and political influence are more common among magistrates, judges and prosecutors.

Although corruption is a structural problem which will only be reduced by structural measures, it is worth mentioning in passing that the obsolete system of responsibilities aggravates the situation since it works against a flexible and transparent administration of justice in cases of misconduct by officials; this points to the urgent need to update this means of combatting an evil which is becoming more widespread and extremely worrying".

Article 4 - Derogation from obligations under the Covenant

20. Bolivia's Constitution authorizes the President of the Republic in exceptional cases and with the consent of the Council of Ministers to declare a state of siege in any part of the national territory. This extraordinary measure has the effect of suspending the rights and guarantees accorded by the Constitution and international agreements with respect to specified persons charged upon good grounds with conspiring against the public order. Accordingly, just as in other countries, in Bolivia the declaration of a state of siege is a constitutional measure designed to preserve the public order in cases of grave danger caused by internal disorder or international war.

21. Article 11 of the Constitution states in this connection:

"In cases of grave danger caused by internal disorder or international war, the chief of the executive power, with the approval of the Council of Ministers, may declare a state of siege in such portion of the territory as may be necessary.

If the Congress meets in regular or special session when the Republic or part thereof is under a state of siege, the continuation of the state of

siege shall be subject to authorization by the Legislature. This shall also apply if the state of siege was decreed by the Executive when the Chambers were in session.

If the state of siege has not been terminated within 90 days, on the expiry of that period it shall come to an end of itself, except in the case of civil or international war.

Persons subjected to detention shall be released unless they have been brought before a competent court.

The Executive may not prolong a state of siege for more that 90 days or declare another state of siege within the same year without the consent of the Congress. An extraordinary session of Congress must be convened if a state of siege occurs when the Chambers are in recess".

22. While a state of siege is in force the guarantees and rights contained in the State Constitution are not suspended ipso facto and in general by the mere declaration of this measure but they may be suspended with respect to specified persons charged upon good grounds with conspiring against the public order.

23. On 18 April 1996 a state of siege was declared in Bolivia owing to serious disturbances staged by leaders of the teaching profession opposed to the Education Reform Act. These disturbances culminated in a situation of genuine social unrest as a result of the participation of opposition political parties which, in an effort to destabilize the Government, promoted all kinds of acts of violence with no thought to Bolivia's young democracy.

24. Furthermore, this violence, which caused the closure of public schools and colleges for more than six weeks, had a direct impact on the student population, which was denied its legitimate right to education during this period. In addition, the violent marches and demonstrations prevented the citizenry from moving about the main towns by day, causing widespread harm and distress.

25. In the first days following the proclamation of the state of siege a number of trade-union leaders were arrested and imprisoned but they were gradually released. On 5 May the last detainee was set free and since then Bolivia has not had any other person in detention as a result of the state of siege.

26. Bolivia has now returned to normal, the activities of the Government have been resumed and full respect for human rights restored.

Article 5 - The provisions of the Covenant may not be interpreted in such a way as to impair fundamental human rights

27. Bolivia's Constitution expressly guarantees full respect for human rights. Article 6 states:

"Every human being has legal personality and capacity, in accordance with the law. He enjoys the rights, freedoms and guarantees recognized by this

Constitution, without distinction as to race, sex, language, religion, political or other opinion, origin, or economic, social or any other condition.

The dignity and freedom of the person are inviolable. To respect and protect them is a primary duty of the State".

28. All the acts of the three powers of the Bolivian State are aimed at strengthening democracy with full respect for human rights. This is why, in accordance with the relevant international treaties and as part of the modernization of the State, the present Government has abolished imprisonment for debt.

29. Article 334 of the Code of Penal Procedure states: "If the guilty person does not have property which may be seized, his physical detention shall take place in an appropriate penal institution, until he makes effective compensation for the damage". This unjust situation means that convicted persons, on completion of their sentence, must remain in prison indefinitely until they pay the civil damages awarded in the case. As a result of this rule Bolivia's prisons have many inmates serving virtual life terms for inability to pay civil damages.

30. About a year ago the Ministry of Justice, on the premise that penalties are imposed for the purposes not of compensation but of punishment and prevention, brought forward a bill on abolition of imprisonment and physical constraint for enforcement of economic obligations, which was approved by the Parliament and promulgated as Law of the Republic No. 1602 on 15 December 1994.

31. Article 1 of this Law states:

"Any person found guilty in a criminal trial shall be released immediately on completion of his sentence, regardless of whether compensation for civil damages and the costs of the case remain outstanding. Such payments may be enforced only from the assets of the person concerned by persons authorized to do so and in accordance with the procedure established by law".

32. The explanation of the reasons for this bill states"

"In contradiction with the categorical statements in article 13 of the current Penal Code to the effect that liability is the limit of the sentence and not the result, articles 334, 335 and 352 of the Code of Penal Procedure disregard the juridical philosophy of the substantive Code, of the Constitution and of international agreements by incorporating an extraneous and illegal element which echoes barbarous measures of primitive law ...

The arguments and references contained in this statement of reasons lead to the conclusion that imprisonment for debt and physical constraint are procedures which have been totally overtaken by the advance of juridical science. Bolivia, as a member of the international community, must bring its legislation into line with the current state of development of law and justice. This reason is moreover sufficient to justify approval of this

bill which, apart from being a legal necessity, constitutes a social response to the just protests of persons arbitrarily deprived of the essential right of a human being: freedom.

33. The promulgation of this Law constitutes compliance with the second part of article 5 of the Covenant.

Article 6 - Right to life

34. Article 7 of Bolivia's Constitution posits the right to life as the most important fundamental right, and in accordance with this principle article 17 states: "The penalties of infamy and civil execution are prohibited. Murder, parricide and treason are punishable by 30 years' imprisonment, without the right of pardon. Treason is defined as complicity with the enemy when the country is in a state of foreign war". Thus, the Constitution provides that the death penalty shall not exist in Bolivia and that the most serious crimes - such as the ones indicated - shall carry a maximum penalty of 30 years' imprisonment.

35. However, anachronistically and as a legacy of the military Governments the current Penal Code still provides the death penalty for the crimes of murder, parricide and treason. The relevant parts of the Code state:

"Art. 109 - (Treason) Any Bolivian who takes up arms against his fatherland, joins forces with its enemies, renders them assistance or acts in complicity with the enemy in any other way when the country is in a state of foreign war, shall suffer the death penalty.

Art. 252 - The death penalty shall be imposed on any person who kills:
(1) his descendants or spouse or cohabiting lover knowing them to be such;
(2) with premeditation, either for trivial reasons or motives of ..."

Art. 253 - (Parricide) Any person who kills his father or mother or a grandparent or other ancestor in the direct line, knowing who they are, shall be punished by the death penalty".

36. The current Penal Code came into force during the de facto Government of General Hugo Banzer, which ruled Bolivia from 1971 to 1978. During the 22 years that this Code has been in force the death penalty has been carried out only once, in the case of the peasant Gregorio Suxo for having murdered his daughter in 1974 during Banzer's Government.

37. The articles of the Penal Code quoted above stand in contradiction with article 17 of the Constitution, which must take precedence over the Code pursuant to article 228 of the Constitution, which states: "The State Constitution is the supreme law of the national juridical order. The courts, judges and authorities shall apply it in preference to the laws and the laws in preference to any other provisions".

38. Accordingly, the death penalty does not exist in Bolivia and there is total agreement that this punishment conflicts with international agreements and the humanitarian conscience of our times.

39. With regard to this article of the Covenant, which protects the right to life, it must be pointed out that Bolivia's criminal legislation provides severe punishment for the crime of genocide. Article 138 of the Penal Code states:

> "Any person who, with the intention of totally or partially destroying a national, ethnic or religious group, kills or harms the members of the group or subjects them to inhuman conditions of existence or imposes on them measures designed to prevent their reproduction or effects by force the displacement of children or adults to other groups, shall be sentenced to 10 to 20 years' imprisonment.
>
> The same penalty shall be imposed on the perpetrator or perpetrators or other persons directly or indirectly responsible for bloody massacres in the country.
>
> If the guilty person or persons hold positions of authority or are public officials, the sentence shall be increased by 100 to 150 days".

Article 7 - Prohibition of torture and other cruel, inhuman or degrading punishment or treatment

40. Torture and cruel treatment are categorically prohibited in the Constitution, articles 12 and 13 of which state:

> "Any kind of torture, coercion, extortion or other form of physical or moral violence is prohibited, under penalty of immediate removal from office and without prejudice to the sanctions that may be incurred by anyone who applies, orders, instigates or consents to them.
>
> Assaults on the person render the immediate perpetrators criminally liable, and the fact that in committing the offence they are obeying the orders of a superior shall not serve as an excuse".

41. Despite these clear and categorical constitutional rules, cases of torture still occur in reality, especially in the investigation of crimes by the police. But the democratic Government is firmly determined to eradicate this evil from our society and it has collaborated in the work of a parliamentary commission which has been investigating cases of torture by the police with a view to the prosecution of the perpetrators. The aim is to establish precedents to prevent any repetition of these practices, which are incompatible with a State governed by the rule of law. On the completion of its inquiries the commission published a detailed report about torture inflicted on citizens accused of terrorism. This report concludes with a draft decision of the Chamber of Deputies ordering the prosecution of 28 public officials for violations of human rights.

42. The report, which has been freely and widely circulated in Bolivia, includes the following chapter on torture and ill-treatment of detainees:

> "TORTURE AND ILL-TREATMENT
>
> The complainants describe the torture and "ill-treatment" to which they had been subjected, as summarized below:

- 24 cases of savage beating
- 24 cases of beating of the genitals
- 4 cases of administration of drugs
- 6 cases of simulated execution by firing squad
- Deprivation of sleep for an average of five nights in almost all cases
- 15 cases of deprivation of food and water
- 1 case of insertion of objects (bullets) in the anus
- 6 cases of threat of infliction of electric shocks
- 2 cases of attempted drowning (the "tank")
- 2 cases of infliction of electric shocks
- 8 cases of attempted suffocation with plastic bags
- 2 cases of threatened rape
- 2 cases of insertion of nails under fingernails and toenails
- 1 case of beating of the feet and insertion of the head in a metal container and beating the container with a hammer (the "bell")
- 20 cases of battering victims against a wall
- Long periods in the "hog-tied" position in almost all cases
- 2 cases of death threats
- Blackmail by means of arrest and torture of family members in almost all cases
- Psychological pressure and intimidation in almost all cases.

The purpose of these actions, according to the complainants, was to inflict punishment by means of torture and also to obtain information and force confessions and denunciations of others.

In all the cases these punishments were combined with offers of gentler treatment. One interrogator would be extremely aggressive and another "kind and understanding", saying that he would not be able to control his colleague unless information was forthcoming.

According to the complainants, there were at least three stages in the development of the "techniques".

The first one involved indiscriminate and almost routine physical torture in a chronological sequence. The "bell" and the "tank" were fixed pieces of equipment in the premises used for interrogation.

The second stage combined physical torture with psychological pressure: the infliction of electric shocks by crude means and threats of execution.

In the third stage electric shocks were inflicted with more sophisticated equipment and it included threats of torture and accusations against spouses, siblings, etc., in order to induce feelings of guilt. The daily

routine was disrupted in order to cause a state of permanent anxiety, for a fixed routine made it possible to "prepare oneself" to withstand the next torture session.

The denial of food and sleep, together with use of the other techniques, was designed to depersonalise the victim, deprive him of his self-esteem and degrade him until he became obsessed with being able to satisfy his basic psychological or culturally specific needs.

Most of these cases were reported to the Commission on Human Rights in the testimony of the detainees, i.e. the alleged victims ..."

43. The publication and dissemination of this report in Bolivia is the best evidence of the determined commitment both of the Government and of civil society to condemn and eradicate all forms of violence during police investigations.

Article 8 - Prohibition of slavery, servitude and forced or compulsory labour

44. Bolivia's Constitution prohibits all forms of slavery and guarantees fair remuneration for all work. Articles 5 and 7 state:

"No type of servitude is recognized and no one shall be compelled to render personal services without his full consent and fair compensation. Personal services may be demanded only when so established by law.

Every person has the following fundamental rights ... (j) To a fair remuneration for his labour, which will provide himself and his family with an existence worthy of a human being".

45. With the sole exception of the case of a number of Guaraní families, referred to above in the information relating to article 2 of the Covenant, no kind of servitude exists in Bolivia, and all the policies of the Government are designed to improve the standard of living of Bolivians by providing basic services, adequate remuneration and education for all. These are the objectives of the recently promulgated laws on popular participation, education reform, capitalization and decentralisation.

Article 9 - Right to liberty and security of person

46. The fundamental rights to liberty and security of person are expressly protected by articles 5, 6 and 7 of the Constitution.

47. Article 9 of the Covenant states that no one shall be subjected to arbitrary arrest or detention, that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest, and that anyone arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power. This article goes on to state that it shall not be the general rule that persons awaiting trial shall be detained in custody, and that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

48. Given the gaps, contradictions and deficiencies in the Code of Criminal Procedure, which have led in practice to serious abuse of detention pending trial, the Ministry of Justice drafted the oath of compliance bill (see para. 14 above) in order to put an end to the evil of the law's delays and the imprisonment without trial which is the fate of 85 per cent of the inmates of Bolivia's prisons. This bill, which is already before the Parliament and whose enactment into law is envisaged for December 1996, is designed to bring the procedures of the criminal law into line with the Constitution and with the international conventions, minimum rules and sets of principles and declarations concerning human rights adopted by the United Nations.

49. Some of the provisions of this bill on the restriction of the use of detention pending trial are described below:

(a) Articles 1-6 are designed to rationalise the use of detention pending trial as a preventive measure to guarantee that the accused will be present at his trial and serve his sentence once the proceedings are completed. The bill lays down the principle that any form of deprivation of freedom as a preventive measure is permissible only in exceptional circumstances and it obliges the police authorities and the Office of the Attorney General to bring the detainee before a competent judge within a time limit of 48 hours;

(b) The bill introduces the oath of compliance as a means of avoiding detention pending trial and improving the level of social and legal equality in relations between the parties to criminal proceedings;

(c) It eliminates the procedure of reviews of judgments, which is a defect in our arrangements which causes delays and impairs the independence of the judges, replacing it by the remedies of interlocutory appeal and appeal in the case of interlocutory proceedings and verdicts or sentences respectively. It also authorises any judge or court hearing a case to grant release on bail for whatever reason;

(d) It amends some of the articles of Law No. 1008 (anti-drugs) to correct any incompatibility with the Constitution and respect for human rights.

50. With regard to the right to compensation of any person unlawfully arrested or detained, the Ministry of Justice has a bill on the establishment of the Compensation Fund provided for in article 94 of the Penal Code.

Article 10 - Right of detainees to be treated with humanity

51. Although our Constitution and other laws of the Republic proclaim that every human being has legal personality and dignity without distinction of any kind, unfortunately these principles are not yet fully observed in the prison system, despite the efforts made by the Government to eliminate situations and practices left over from a distant past.

52. There is a sharp contradiction here between the legal and actual situations. The existing prison structure is incompatible with Bolivia's modern prison legislation, so that it is impossible to apply the rules designed for the rehabilitation of offenders.

53. Article 25 of the Penal Code states that the purpose of the punishments provided by Bolivian legislation is the "correction and social rehabilitation of the offender and performance of the general and specific functions of prevention".

54. Furthermore, the Sentence Enforcement and Penitentiary System Act states:

"Art. 2 - The purpose of penitentiary establishments is not only to ensure the custody of convicted persons in accordance with their sentences and security measures but also, and in particular, to ensure their reeducation and social rehabilitation in accordance with the principles of penitentiary science.

Art. 3 - The operation of the prison system implies:

(a) Consideration and respect for the personality of the individual prisoner and for his legal rights and interests not affected by the sentence;

(b) The recovery of such individuals for their social group by enhancing their sense of responsibility and encouraging their self-respect, and by inculcating a will to live according to the law and to maintain themselves by the product of their labour in accordance with their abilities".

55. Owing to the unsuitable and defective prison infrastructure, the inmates of all Bolivia's prisons share the same quarters without any separation, a factor which impedes the work of the Observation and Classification Centre, which is concerned with the scientific study of a convict's personality.

56. In order to prevent the housing of minors in prisons on a permanent basis, the Ministry of Justice has drafted the following measures:

(a) Article 4 of the oath of compliance bill states that judges shall order detention pending trial only for offences carrying maximum sentences of five or more years' deprivation of liberty. In the case of shorter terms, they must order release under oath of compliance.

(b) The Parliament is currently considering a bill on pardons for minor and elderly prisoners, so that by the end of the year minors convicted and imprisoned for less serious offences will be pardoned; and

(c) For more than a year now proceedings have been under way to transfer some land at Kallutaca, close to La Paz, for the establishment of an institution for minors aged under 21. In this connection article 9 of the Sentence Enforcement Act states: "The objective of institutions for minors aged under 21 shall be to ensure the psychological and physical development of an inmate by means of training, education, work, suitable leisure activities, and teaching of an occupation to enable him to pursue a way of life in conformity with the requirements of the law and with an awareness of his own responsibility".

57. Other effective means of humanizing prison life in Bolivia include the opening at the beginning of this year of a new prison in the town of Trinidad

and the forthcoming completion of a big prison in the town of Cochabamba, which has been specifically designed for the implementation of policies of reeducation and social rehabilitation.

Article 11 - Prohibition of imprisonment for debt

58. Nobody has been imprisoned for debt in Bolivia since the promulgation of Law No. 1602 on 15 December 1994. Up to that date it had been understood that civil liability resulting from an offence was not a debt, so that offenders had to remain in prison after completion of their sentence until compensation was paid to the victim or members of his family.

59. The Civil Code states with respect to exercise of this right:

> "Art. 1466 - (Prohibition of physical constraint) A debtor may not be subjected to physical constraint for the enforcement of obligations regulated by this Code.

60. Article 1 of the Act abolishing imprisonment and physical constraint for enforcement of economic obligations states:

> "All persons found guilty in criminal proceedings shall be set free immediately on completion of their sentence, regardless of whether compensation for civil damages and the costs of the proceedings remain outstanding. Such liability may be enforced only from the assets of the person concerned by persons authorised to do so and in accordance with the procedure established by law".

Articles 12 and 13 - Freedom of movement and prohibition of illegal expulsion of foreigners

61. The freedom of movement, a right embodied in article 7 of the Constitution, is exercised and guaranteed in the most effective possible way.

62. Every person has a right to enter, remain in, pass through and leave Bolivian territory with no more formality than is prescribed by the laws of the Republic. This applies, for example, to minors, whose parents or guardians have to obtain a special permit from the National Organisation for Children, Women and the Family (ONAMFA) in order to be able to take them out of the national territory or move them from one town to another.

63. The only restrictions on the freedom of movement in Bolivia are the same as the ones regulating this right in other countries.

64. Furthermore, foreigners living in the national territory may be expelled only pursuant to a decision adopted in accordance with the law.

Articles 14, 15, 16 and 17 - Equality before the law, law in effect prior to the commission of the offence, recognition of legal personality and right to privacy

65. Every one of these rights is recognized and protected by the Constitution and laws of the Republic.

66. With regard to the principles of presumption of innocence and the law in effect prior to the commission of the offence, article 16 of the Constitution states:

> "An accused person is presumed innocent until his guilt has been proved. The right of defence of the person on trial is inviolable. From the moment of his detention or imprisonment, the person being held has the right to be assisted by a defence counsel. No one may be sentenced without first being heard and judged in a legal trial and no penalty may be suffered unless it has been imposed by final sentence and by a competent authority. A criminal conviction must be based on a law in effect prior to the trial, and subsequent laws may only be applied if they are more favourable to the accused".

67. With regard to recognition of legal personality and the right to privacy, articles 6 and 20 of the Constitution state that every human being has legal personality and capacity and that the dignity and freedom of the person are inviolable, it being a primary duty of the State to respect and protect them. On the right to privacy it states:

> "Private papers and correspondence are inviolable and may not be seized except in cases prescribed by law and by written order of a competent authority setting forth the reasons therefor. Seized or intercepted legal documents shall have no legal effect. No public authority or any person or organisation may intercept private conversations or communications by means of an installation which monitors them or diverts them for examination".

68. With reference to the last part of the article quoted above, article 37 of the Telecommunications Act states: "In the absence of a judicial order issued by a competent authority, interception, interference, obstruction, alteration, deviation, publication or divulgation of the content of communications is categorically prohibited".

69. Some of the provisions of the anti-drugs legislation (Coca and Controlled Substances Regime Act) violate the principle of assumption of innocence: for example articles 108 and 109, which prohibit preliminary defences, except the death of the accused and res judicata, and provisional release in such proceedings. In order to bring this legislation into line with the Constitution the oath of compliance bill provides for provisional release when:

(a) The accused is found to have no case to answer by a decision handed down during the proceedings or is found not guilty;

(b) The accused has already spent in detention the period of imprisonment imposed by the court;

(c) The accused has spent more than 18 months in detention, counting from the date of his arrest, without a sentence being handed down in the first instance;

(d) More than four years have been spent in detention without the issue of a court decision which has acquired the status of res judicata; and

(e) The period of detention has exceeded the minimum period of the penalty provided in principle for the crimes for which the accused was tried.

70. In addition, prescription and pardon have been included as preliminary issues.

Articles 18, 19, 20, 21 and 22 - Freedom of thought, opinion, peaceful assembly and free association, and prohibition of propaganda for war or hatred

71. The freedoms of thought, opinion, peaceful assembly and free association are embodied in the Constitution and laws of the Republic and they are widely and effectively exercised in practice.

72. The Constitution states with regard to these fundamental rights:

"Art. 7 - Every person has the following fundamental rights ...

(a) To freely express his ideas and opinions, by any means of dissemination;

(b) To assemble and to associate for lawful purposes;

(c) To make petitions, individually or collectively ..."

73. All kinds of propaganda for war and advocacy of national, racial or religious hatred are prohibited by law.

74. Each of these rights is protected by domestic legislation and also by the international treaties which Bolivia has signed with the international community. For example, the American Convention on Human Rights was approved and ratified by Law No. 1430 of 11 February 1993, and this important convention is thus a law of the Republic of Bolivia and application of its rules is mandatory.

75. As already pointed out, these fundamental rights are effectively exercised in Bolivia; one proof of this is the publication and dissemination of the report on torture of citizens accused of armed uprising, to which reference was made above in connection with article 7 of the Covenant.

76. All political opinions, criticisms or reports of violations of human rights, etc., are permitted and protected in Bolivia as an expression of the freedoms of thought and opinion. Public officials and members of civil society enjoy and exercise these rights in the broadest possible manner.

77. As an example of the unfettered exercise of the freedom of opinion we reproduce below an article by the former Assistant Secretary for Human Rights of the Ministry of Justice concerning the death of a Spanish citizen in Bolivia, which was published in a leading national newspaper:

"Death of the Spaniard Puchol on 10 February this year and human rights in Bolivia. The remote frontier town of San Matías witnessed a crime which

is by definition an act alien to the spirit of Our Bolivia, which for years now has been following the path of democracy and human rights.

On this date a group of soldiers, reenacting a past which nobody any longer advocates or desires in Bolivia, betraying their institution and motivated only by primitive instincts, savagely beat to death the Spanish citizen Manuel Puchol Pastor.

Puchol had been in the Brazilian forest on the borders of Bolivia and had entered San Matías to see something of a part of our territory. This young Spaniard, his parents' only child, never dreamed that this visit would cost him his life. In San Matías a person mistaken about the era in which he was living and thinking that the clock of history had stopped in the second half of 1980 was lying in wait for a victim like a spider, and by chance this victim was the unfortunate Spanish tourist.

It is for the judicial system to establish what really happened, but it is clear that in the early morning of that tenth day of February Manuel Puchol was subjected to a terrible ordeal by a butcher named Marco Antonio Mejía Alarcón, who in abuse of his authority and with a clear criminal intent beat and made others beat the defenceless tourist until his vital organs were destroyed. The autopsy report states that Puchol's corpse showed a fractured skull, ruptured liver, detached kidneys, crushed right lung and bruising all over the body. But that is not all. Not content with having destroyed him physically they also sought to destroy him morally, and in order to cover up the crime some member of this savage gang inserted cocaine into the nasal cavities of the corpse in order to give the impression of death from a drug overdose.

These happenings amount to a real national disgrace, and for the sake of the honour of Bolivians and the honour of Bolivia they must never be repeated; accordingly the criminals must receive the punishment they deserve.

Bolivia has signed and ratified all the human rights agreements and treaties produced by the international community. Bolivia is no longer a country of coups d'état, or of abuse, or of impunity. Bolivia is a State governed by the rule of law in which the rights of every human being who lives in or visits our territory are effectively guaranteed.

So great is the desire of the Head of State, President Sánchez de Lozada, to ensure respect for the Constitution and the human rights treaties that for the first time in our history, on his own initiative and by a law of the Republic, he has created the Human Rights Department in the Ministry of Justice. This means that since September last year we have had in Bolivia an organ of the Executive specifically responsible for the protection and promotion of human rights.

As a result there is an acute awareness in the conscience of our people and in the democratic Government of the need to ensure that no violation of human rights goes unpunished, and for this very reason all the persons charged with this crime are in prison.

What happened in San Matías was an isolated act alien to the climate of tranquillity and tolerance which prevails in Bolivia. The whole Bolivian people has been shamed and damaged by this crime which discredits the country abroad.

Our young democracy will be strengthened by the punishment, in accordance with the law, of the murderers of Manuel Puchol. Bolivia's judicial system has the country's honour in its hands." (Presencia, 23 September 1994).

Articles 23 and 24 - Rights of the family and of the child

78. The Constitution, the Family Code, the Minors' Code and all the laws of Bolivia protect the rights of the family and of the child in the broadest possible manner.

79. The Constitution states:

"Art. 193 - Matrimony, the family and maternity are under the protection of the State.

Art. 195 - All children, without distinction as to origin, have equal rights and duties with respect to their parents ...

Art. 199 - The State shall protect the physical, mental and moral health of children, and shall uphold the rights of children to a home and to education ..."

80. The Family Code states:

"Art. 5 - The rules of family law are rules of public order and may not be waived at the wish of private individuals, subject to the penalty of nullification, except in the cases expressly permitted by law".

81. The Minors' Code states:

"Art. 15 - Every minor has a right to life and health. The State has an obligation to guarantee and protect these rights by means of social policies which ensure suitable conditions for the gestation, birth and integrated development of minors.

Art. 198 - In no cases shall minors be detained in institutions intended for the detention of adults".

Legacy of the past

82. Despite these constitutional provisions and family laws, which protect the rights of women, there are other laws and situations still in existence which undermine such guarantees. For example, there is legislation which enhances the privacy and independence of the family, establishing a social tolerance of domestic violence to the point of granting it impunity.

83. Article 276 of Bolivia's Penal Code establishes broad legal impunity for assaults and ill-treatment of every kind, as well as other forms of violence in the family environment, when it states:

> "No penalty shall be imposed when the injuries are slight and caused by spouses, ancestors, descendants, siblings, relatives in the direct line, and brothers or sisters by marriage, when living together".

84. The current Penal Code was promulgated 22 years ago under the de facto Government, and the Ministry of Justice is now preparing a new Code. It must also be pointed out that, as a result of the political will of Bolivian society to consolidate democracy with full respect for human rights, the Parliament enacted Law No. 1599 of 18 October 1994 which ratifies and adopts the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. In addition, the Parliament is currently discussing a domestic violence bill designed to provide an effective remedy for this evil.

85. In July 1994 the Office of Gender Affairs, an organ of Bolivia's Ministry of Human Development, published the book Violencia Doméstica Registrada en La Paz (Recorded Domestic Violence in La Paz), which reports:

> "The investigation has provided evidence that violence in domestic relations is used unilaterally by men against women. Out of some 7,500 cases of domestic violence reported by women, 95 per cent of the attacks were by men ... (p. 12).
>
> In addition to the cumbersome formalities attached to cases of domestic violence in Bolivia, a woman who complains of assault is confronted by an institutional structure neither disposed or able to deal with such situations and impose penalties.
>
> Information provided by the family courts, the prosecution service, the police, non-governmental organisations and private advisory services show that almost all the women undergo many years of violence before reporting it and that when they do bring themselves to take this first step it is because they have suffered - in addition to daily beatings by their husband or live-in lover - abandonment, removal of property, adultery or attempted murder. However, from the moment the report is made, other unsuspected torments begin for the complainant.
>
> INSENSITIVE OFFICIALS
>
> After many years of suffering in some cases, a woman submits her complaint to an official who usually does not care and does not know about this kind of problem and who receives the woman's statement concerning the abuse and attacks to which she has been subjected as if he was dealing with any routine offence.
>
> At the very time when the complaint is made, the official or officials tend to offer their own value judgement about the difficulties of the remedies in cases of family disputes and, therefore, adopting a paternalistic attitude, they recommend an "amicable settlement" with the husband or live-in lover.

The indifference, when not the outright contempt, with which such women are treated is a result of the superficial attitude taken by society to this question and of prejudices which still persist; thus, any woman who complains of having been beaten, harassed or humiliated is regarded as a trouble-maker who just feels like airing her private life in public, especially if it is not the first time that she has taken such action.

PERSISTING PREJUDICES

In addition, however, women who complain suffer discrimination both because of their gender and in terms of the type of complaint and their social status. The official handling of the problem will depend on the social and cultural status of the complainant: this means that a lower-class woman suffers greater discrimination and lack of attention on the part of the authorities.

Violence is assessed subjectively on the basis of the gender constraint which society has imposed on women. If a woman does not carry out her "duties" as woman, mother and wife, the violence is justified; what is more, the husband has a right to punish such behaviour.

If a woman only complains of ill-treatment without showing severe physical injury, there is even less likelihood of her complaint receiving attention, because when a woman declares that she is a victim of domestic violence she runs the risk of also falling victim to institutional abuse in the form of official indifference, prejudices and slow justice, characteristics of Bolivian society's handling of this social problem" (pp. 52-54).

Situation of imprisoned minors

86. The situation of imprisoned minors also leaves very much to be desired, for in the prisons they share the same quarters with adult offenders, in flagrant violation of their constitutional rights.

87. In order to find an immediate solution to this problem, while institutions for imprisonment of minors are being built, the Ministry of Justice has prepared a pardons bill, currently before the Parliament, for the release of minors and elderly persons convicted and imprisoned for less serious offences.

88. The explanation of the reasons for this bill includes the following points:

"Our country's system for enforcement of penalties, or prison regime, is in a frankly alarming situation. This crisis is painfully apparent in the prisons, where there is an "inversion of the penal system", with the result that only a minority of prisoners are exposed to an effective penitentiary regime (and this following a lengthy period of confinement without any kind of treatment and in pitiful conditions). The fact is that convicted persons have their sentences actually enforced only after a long period of detention awaiting trial, during which they suffer all the consequences of "prisonization", i.e. internalization of the standards of prison society.

The most vulnerable persons who suffer the worst consequences of this system are the young and the elderly, especially young prisoners who find themselves living for the first time in chaotic and overcrowded conditions, exposed to perversions and vices such as drug addiction and alcoholism, and subjected to assaults and abuse of every kind by older inmates, from whom they are not kept separate. They live most of their days in a prison system which in practice does not perform its function of rehabilitation and social reintegration and has come to represent an extremely severe and disproportionate punishment in those cases in which the prisoners have been sentenced for less serious offences or have spent a long period in detention before beginning to serve their actual sentences.

Persons accused of crimes crimes are not kept separate from convicted prisoners, minors share the same quarters as adults, and owing to the delays of the justice system some 80 per cent of all detainees in Bolivia's prisons have not received a specific sentence stating their guilt, so that detention awaiting trial becomes a form of imprisonment in advance. This situation is flagrantly inconsistent with the principles and guidelines contained in the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, and with the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by General Assembly resolution 40/33 of 29 November 1985".

Article 25 - Right to take part in public affairs

89. The right to take part in public affairs, to vote and be elected, and to have access to public office under conditions of equality is guaranteed by the Constitution and laws of the Republic, and it is a right which is exercised in practice.

90. The Constitution states:

"Art. 40 - Citizenship consists of:

(1) Participating as a voter or as an elected official in the formation or exercise of the public powers;

(2) The right to hold public office, with no other requirement than that of fitness, save for the exceptions established by law".

91. The Elections Act states with respect to universal suffrage:

"Art. 3 - The principles suffrage are:

(a) Universal, direct, free, mandatory and secret suffrage. Universal, because all citizens without any distinction enjoy the right to vote; direct, because the citizenry takes a personal part in the election and

votes for the candidates of its choice; free, because it expresses the wishes of the voter; mandatory, because it constitutes a duty of citizenship which may not be renounced; and secret, because the confidentiality of votes is guaranteed by law;

(b) The public and definitive counting of votes;

(c) The system of proportional representation, which guarantees the rights of majorities and of minorities".

92. On the right of citizens to take part in elections, to vote and to be elected by means of universal suffrage the Constitution states:

"Art. 219 - Elections constitute the foundation of the representative democratic system and are based on universal, direct and equal, individual and secret, free and mandatory suffrage, on the public counting of votes, and on a system of proportional representation.

Art. 220 - All Bolivians who have reached 18 years of age are voters, regardless of their level of education and their occupation, with no further requirement than their obligatory inscription in the Electoral Register.

Foreigners may vote in municipal elections under the conditions prescribed by law.

Art. 221 - Citizens who satisfy the requirements prescribed by the Constitution and by law may be elected to public office".

93. The Elections Act of 5 July 1991 states:

"Art. 3 - The principles governing elections are: (a) Universal, direct, free, mandatory and secret suffrage. Universal, because all citizens without any distinction enjoy the right to vote; direct, because the citizenry takes a personal part in the election and votes for the candidates of its choice; free, because it expresses the wishes of the voter; mandatory, because it constitutes a duty of citizenship which may not be renounced; and secret, because the confidentiality of votes is guaranteed by law; (b) The public and definitive counting of votes; (c) The system of proportional representation, which guarantees the rights of majorities and of minorities".

94. The right of all Bolivians to take part in public affairs with no further requirement than that of fitness is a guaranteed right in democratic Bolivian society. It is worth pointing out in this connection that the current Vice-President of the Republic, Victor Hugo Cárdenas, is a worthy representative of the Aymara people.

Article 26 - Prohibition of all forms of discrimination

95. In Bolivia all persons are equal before the law and are entitled to equal protection by the law without any discrimination.

96. The legal equality of all Bolivians is expressly recognized in article 6 of the Constitution:

> "Every human being has legal personality and capacity, in accordance with the law. He enjoys the rights, freedoms and guarantees recognised by this Constitution, without distinction as to race, sex, language, religion, political or other opinion, origin, or economic, social or any other condition".

97. There thus exists a constitutional and legislative basis for guaranteeing the following rights:

(a) The right to equal treatment in the courts and all the other bodies which administer justice;

(b) The right to security of person and the protection of the State against any act of violence or assault on personal integrity committed by public officials or by any individual, group or institution;

(c) Political rights, in particular the right to take part in elections, to vote and to be elected by means of universal and equal suffrage, the right to participate in the Government and in the management of public affairs at all levels, and the right of access to public office under conditions of equality;

(d) Other civil rights such as the freedom of movement and the rights to a nationality, matrimony, private property, inheritance, freedom of opinion, expression and assembly.

Article 27 - Rights of ethnic minorities

98. Bolivia is a multiethnic country in which everyone is guaranteed the right, in common with the other members of his group, to lead his own cultural life, to profess and practise his own religion, and to use his own language.

99. The measures adopted to ensure the full exercise of this right include article 1 of the Constitution, as amended by the Law of 11 August 1994, which states:

> "Bolivia, free, independent, sovereign, multiethnic and pluri-cultural, constituted as a unitary republic, adopts for its government the democratic form, founded on the union and solidarity of all Bolivians".

This provision of the Constitution is of real importance, for Bolivia's territory is inhabited by indigenous peoples such as the Quechua, Aymara and Guaraní, whose peaceful relations and coexistence the Bolivian State seeks to achieve by means of a policy of full equality of economic, social and political opportunities.

Special measures

100. Bolivia is a nation comprising various indigenous peoples whose ancestry and traditions have permeated our national identity. To safeguard and protect

these peoples Bolivia has granted them special rights, for example, by allocating them geographical areas to keep for their exclusive use by Supreme Decrees Nos. 22609, 22610 and 22612 of 24 September 1990.

101. The preamble to the first of these decrees states that it is the purpose of the National Government to formulate policies for the recognition and consolidation of the indigenous territories in order to guarantee their physical survival and their social, cultural, economic and political development, and the decree goes on to state in its articles 1, 2 and 5:

> "Recognition as the indigenous territory of the Sirionó people is granted to the area traditionally occupied by this people and delimited by their ancestors by the 36 natural landmarks in "El Ebiato", San Javier canton, Cercado province, in the department of Beni ... Recognition as indigenous Sirionó territory is also granted to an area of 30,000 hectares in the region known as Monte San Pablo, bordering on "El Ebiato"... The indigenous Sirionó territory is inalienable and indivisible and is not subject to disposal or distraint, and the Sirionó people may make rational use of the water resources and the animals and plants found in this territory, in accordance with their customs, traditions and development needs ..."

102. The second decree, No. 22610, states that recognition of the Isiboro-Sécure National Park as an indigenous territory of the indigenous peoples which live there is not incompatible with the status of national park: article 6 reads:

> "Any construction of development infrastructure, in particular roads and pipelines, in the indigenous territory of the Isiboro-Sécure National Park shall be subject to a prior environmental impact study, duly examined and approved by the Ministry of Peasant Affairs and Agriculture with the participation of the indigenous organization of the region ..."

103. Articles 1 and 16 of the third decree, No. 22611, state:

> "The Chimanes region is declared an indigenous territory, constituting the socio-economic space for the survival and development of the Chimanes, Mojenos, Yucarés and Movimos indigenous communities and settlements located therein ... Forestry enterprises shall remove their installations and equipment from the indigenous territory ..."

104. Lastly, this same decree establishes a commission to draft a bill on the indigenous peoples of the East and Amazonia, which is to define the indigenous races and peoples and establish their rights and duties, as well as dealing with the relationship between their traditional structures of internal government and the political and administrative system of the Republic.